IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 731 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SULEMAN ISMAIL KHARADI & 1 - Appellant(s)
Versus
MINOR IDARISH AHEMAD BALKI & 1 - Defendant(s)

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Appearance :
MR SB PARIKH & MR RAJNI H MEHTA for Appellant(s) : 1 - 2.
MR RN SHAH for Respondent : 1
None for Respondent : 2

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 11/07/2007

ORAL JUDGMENT

Shri S.B. Parikh & Shri R.H. Mehta, learned counsel for the appellants; Shri R.N. Shah,

learned counsel for the respondent no.1; none for the respondent no.2.

2. Being aggrieved by the award made by the learned M.A.C. Tribunal [A], Panchmahals, Godhra, in M.A.C. Petition No. 461 of 1986, the Insurance Company, owner and the driver have filed this joint appeal. This Court, after following the judgment of the Supreme Court in the case of *H.S. Ahammed Hussain and another v. Irfan Ahammed and another, reported in AIR 2002 SC 2483*, has held that such joint appeal is not maintainable. The Supreme Court, in the above judgment has observed that such joint appeal would not be maintainable and the Court can proceed with the appeal only if name of the Insurer that is, the Insurance Company, is deleted from the cause title. Learned counsel for the appellant, however, submits that joint appeal has been filed at the instance of the Insurance Company.

3. Even if I direct deletion of the name of the insurer or transposition of the Insurance Company as party respondent, driver and the

owner, in the set of the circumstances cannot be allowed to play trumpet for and on behalf of the Insurance Company, specially when the Insurance Company has been held jointly and severally liable.

4. Taking into consideration the totality of the circumstances, I am unable to hold that the appeal can be continued. On this short ground, the appeal can be dismissed.

5. Even on the merits, it is to be seen that the respondent-claimant had suffered amputation of his leg and his leg was amputated below middle thigh 2”-3” below knee. The Tribunal, in the circumstances of the case found that a sum of Rs. 15,000/- should be awarded towards pain, shock and suffering and as the claimant has become crippled forever, he is entitled to a sum of 1,72,800/- towards loss of future earning. The Tribunal has made certain other awards which appear to be reasonable. Taking into consideration that a young boy had suffered amputation of the leg below knee and is crippled forever, award of Rs.15,000/- towards pain,

shock and suffering and award of Rs. 1,72,800/- towards loss of future earning cannot be said to be excessive.

6. Even on the merits, I do not find any good reason to interfere with.

7. The appeal deserves to and is accordingly dismissed. No costs.

[R.S. GARG, J.]

pirzada/-